

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) MEGAN CAPEL, Administratrix,
of the Estate of Terral Brooks
Ellis, II, Deceased,
(2) TERRAL B. ELLIS, SR., and
(3) SHELLY BLISS,
Plaintiffs,

Vs.

CIV-17-325-JED-FHM

OTTAWA COUNTY BOARD OF COUNTY
COMMISSIONERS, et al,
Defendants.

VIDEO DEPOSITION OF
THERESA HORN

DATE: OCTOBER 8, 2019

REPORTER: MARISA SPALDING, CSR, RPR

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1 Q (By Mr. Smolen) I'm sorry? No? I
2 forgot to tell you. You might remember this
3 from the last deposition. There's a group of
4 lawyers in here that might object to the form of
5 my question. You still need to answer until Jim
6 tells you not to answer, okay?

7 A Okay.

8 Q You indicated no one was ever critical
9 of any of the help that you had offered --

10 A Not --

11 Q -- to the inmates?

12 A -- that I was aware of. Oh, I'm sorry.

13 MS. GOOCH: Let him finish the
14 question.

15 THE WITNESS: Okay.

16 MS. GOOCH: Object to the form of
17 that question.

18 Q (By Mr. Smolen) To your knowledge, has
19 anyone at the Ottawa County Sheriff's Office
20 ever expressed to you concerns that they had
21 with your delivery of medical at the jail?

22 MS. GOOCH: Object to the form.

23 MR. GIBBS: You can answer.

24 THE WITNESS: Not that I was aware
25 of, no. Nobody said anything to me.

1 Q Uh-huh.

2 A I wasn't.

3 Q Okay. Have you been on pain medication
4 for that?

5 A Just right after surgery.

6 Q When was your surgery?

7 A May 10th.

8 Q Of what year?

9 A This year.

10 Q What do you have to do to stay
11 registered as an LPN with the State of Oklahoma?

12 A You have to just keep your license
13 renewed.

14 Q And what's that process?

15 A Every two years you have to go online
16 and just -- they just up -- upgrade it for the
17 next two years.

18 Q Are you required to do any continuing
19 education?

20 A No.

21 Q Have you done any continuing education
22 in the area of being an LPN since -- let's say
23 2013?

24 A I went to jail school.

25 Q Went to jail school. When did you go to

1 jail school?

2 A Every year.

3 Q And what is jail school?

4 A It's the school the State puts on that's
5 state required for every jailer or whoever works
6 back in the jail to take every year.

7 Q And where did that take place at?

8 A Usually at the courthouse.

9 Q And are there sign-in sheets?

10 A Yes.

11 Q Who administers that yearly review?

12 A It varied from the jail administrator to
13 the undersheriff. It just varied every year.

14 Q And was that specific to the Ottawa
15 County Jail?

16 A No, it was specific to the state --
17 every jail in the state.

18 Q And so would the jail administrator from
19 the Ottawa County Jail be holding that?

20 A He has in the past. They have a
21 curriculum they have to -- we have to go by --
22 or they did.

23 Q Beyond doing the yearly jail school,
24 have you had any other additional training or
25 education in the area of being an LPN?

1 they had an emergency hours that I could fax the
2 order to them. But like I said, we may not get
3 that medication that night. It may be the next
4 morning. If it was something that was a matter
5 of life or death, I would send them to the ER to
6 get that medication.

7 Q (By Mr. Smolen) You had indicated there
8 wasn't a set time that Aleta Fox would come, but
9 she would come at your request and, generally,
10 it would be maybe once or twice a week --

11 A Uh-huh.

12 Q -- that you called, correct?

13 A Correct.

14 Q And was that just for her to see
15 specific inmates that you wanted her to see?

16 A The process of her seeing an inmate was
17 if they -- they would fill out a sick call slip
18 and -- and/or they had gotten into a fight that
19 day or anything that had happened.

20 Q An acute injury?

21 A Yes, then I would call her and she would
22 come over.

23 Q Okay. Would you call her for every sick
24 call slip?

25 A No.

1 Q Okay. How would you decide which ones
2 to call her on and which ones not to?

3 A Well, I did kind of like a triage
4 procedure. I would have them come to my office.
5 And then if it was something that I needed her
6 to see for, I would call her and she would come
7 over.

8 Q And -- and how -- I want you to walk me
9 through that triage process and what would lead
10 you to make that decision to call Ms. Fox.

11 A Well, if they had something that I could
12 not manage in the scope of my licensed nurse --
13 licensure -- I would call her.

14 Q Okay. Now are you allowed to make a
15 diagnosis as an LPN?

16 A No.

17 Q Okay. So if you're not allowed to make
18 a diagnosis as an LPN, how are you ruling out
19 who to call Ms. Fox for and who not to call Ms.
20 Fox for?

21 MR. GIBBS: Object to the form.

22 THE WITNESS: Well, that would only
23 be for the inmates that would come in and would
24 tell me they have these issues. If they had no
25 outward signs of this medical condition, then I

1 -- after -- I would call their physician to get
2 the -- her -- their PI-- PHI -- or I would call
3 Aleta and they would come -- she would come
4 over.

5 Q (By Mr. Smolen) You're saying if they
6 had no outward signs of their medical condition?

7 A Right, if they wasn't exhibiting any --
8 any out -- like somebody had asthma or something
9 along that line because...

10 Q So let's use the asthma examples.
11 Someone comes in and they've got asthma, there's
12 no outward sign of a medical condition --

13 A Uh-huh.

14 Q -- you would call her?

15 A Well, if they needed an inhaler. Most
16 usually, I would have them -- I would let them
17 call their family or I would call their
18 pharmacist and they would deliver their meds or
19 I would go get them.

20 Q Okay. But the triage process, I mean,
21 that's a specific example you gave where someone
22 comes in and they've got asthma and they need an
23 inhaler and you know they've got a prior --

24 A Uh-huh.

25 Q -- history of asthma?

1 A Uh-huh.

2 Q What about with the sick calls, though?
3 When you're going through and you're assessing
4 the sick call notes, can you walk me through the
5 process as to how you decide which ones to call
6 Ms. Fox on and which ones you wouldn't?

7 A If it was something that I couldn't --
8 that was outside the realm of my licensure then
9 --

10 Q Let -- okay, then let's -- let's define
11 --

12 MR. GIBBS: Hang on. Were you done
13 with your answer? I want her to finish her
14 answer. Go ahead.

15 THE WITNESS: Then I would call her.

16 Q (By Mr. Smolen) Okay. Let's -- let's
17 define what you understood your scope to include
18 as an LPN.

19 A That's hard to say working in a jail
20 facility. I don't know how to answer that.

21 Q Well, I just want you to tell me what
22 you understood your scope as an LPN to be?

23 A Well, if they had something that they
24 needed -- like a staff infection or an abscess,
25 I could not do that. If they came in and

1 presenting a fractured limb from prior to being
2 arrested, I would call her.

3 Q But you're triaging the sick calls
4 before Ms. Fox ever sees them, correct?

5 A Uh-huh.

6 Q Yes?

7 A Yes.

8 Q And how would you assess a sick call as
9 to whether or not a person needed to see a
10 doctor or not without making a diagnosis?

11 MR. GIBBS: Object to the form. Go
12 ahead.

13 THE WITNESS: I don't know how to
14 answer that one.

15 Q (By Mr. Smolen) I mean, at some level,
16 you're having to make a diagnosis when you are
17 triaging the sick calls as to whether or not an
18 inmate needs to see a physician or not, correct
19 or --

20 MR. GIBBS: Object --

21 Q (By Mr. Smolen) -- a physician's
22 assistant?

23 MR. GIBBS: Object to the form.

24 THE WITNESS: No, I'm not making a
25 diagnosis because I'm not allowed to do that.

1 Q Just what you recall about Mr. Ellis,
2 like we did with the other --

3 A Okay, I don't --

4 Q We talked about some of the other
5 inmates.

6 A Right. He had complained of back pain
7 one time -- once -- and he wanted to go to a
8 chiropractor because he said he had been to a
9 chiropractor before, I think is what he said.
10 Then I -- I don't know if I let him call his
11 grandfather or we was going to call his
12 grandfather -- I don't remember that -- and he
13 was going to set him up an appointment and we
14 would take him.

15 And then I don't remember them calling me
16 about sending -- calling EMS but it's in my
17 notes, but I don't actually recall it. And then
18 I remember coming to work the next day and he
19 was down in H1.

20 Q Down in H1?

21 A Yes.

22 Q Now earlier in the deposition, you had
23 said that you had always preferred them to house
24 in H2. We were talking about -- I think it was
25 about a suicide. What was your preference

1 pertaining to that first visit? You had
2 mentioned the chiropractor, maybe call -- let
3 him call his grandpa. Anything else?

4 A Only what I documented. I don't
5 remember that day -- it's been so long ago --
6 that he had a protrusion in the L1 or L2 or
7 somewhere along the spine. He said he had --
8 and he told me that -- that he had frequently
9 had his back to pop out of place and he wanted
10 to go -- he's the one that's suggested going to
11 the chiropractor.

12 Q I'll hand you what we're going to mark
13 as Plaintiff's Exhibit No. 3.

14 (Plaintiff's Exhibit No. 3
15 marked for identification)

16 Q Ma'am, do you recognize this document?

17 A I recognize it as my writing.

18 Q Okay. And it's the progress notes
19 pertaining to Terral Ellis, correct?

20 A Correct.

21 Q And I noticed on the last note here you
22 signed that note, correct?

23 A Yes.

24 Q When did you complete your progress
25 notes?

1 you?

2 A No.

3 Q Correct?

4 A Correct.

5 MR. SMOLEN: Let's watch the video
6 from the 22nd.

7 Q (By Mr. Smolen) You understood that
8 there was a jail video and jail audio at the
9 Ottawa County Jail outside of the medical unit,
10 correct, in what you've described as the holding
11 area?

12 A Yes.

13 Q And were you aware at the time that Mr.
14 Ellis was housed in there that it was video --
15 monitored by video and audio?

16 A Yes.

17 Q Okay. I'm going to play some clips and
18 ask you some questions about those.

19 (Video playing)

20 Q Can you describe to the jury what
21 they're seeing on the left -- top left-hand
22 corner?

23 A The book-in desk.

24 Q Okay. And in the right -- top-hand
25 right, what are they seeing?

1 A Those are the holding cages.

2 Q Okay. And Mr. Ellis' holding cell, he's
3 not in the cage. He's off to the right hand of
4 that, correct?

5 A Yes, over there.

6 Q And then we have the long hallway in the
7 bottom right, correct?

8 A Correct.

9 Q And then another angle shot of the
10 book-in desk, correct?

11 A Correct.

12 (Video playing)

13 Q Can you identify who that jailer is?

14 A That's Charles Shoemaker.

15 Q Okay. Was he a supervisor?

16 A He was the assistant jail administrator.

17 Q Assistant jail administrator?

18 A Yes.

19 Q During 2015?

20 A Yes.

21 Q Was he your supervisor?

22 A No.

23 (Video playing)

24 Q You had an opportunity to review the
25 jail video and audio from at least this one

1 encounter with Mr. Ellis, correct?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q At one point in time during the
6 interaction, you told Mr. Ellis you were tired
7 of listening to his dumb ass; do you recall
8 hearing that?

9 A No. Do you want to play it again?

10 Q We'll play it again.

11 A Okay.

12 (Video playing)

13 Q Did you hear that part there, I'm tired
14 of listening to your dumb ass?

15 A No.

16 Q Oh, I'm sorry, I'm tired of dealing with
17 your dumb ass?

18 A I heard something about dumb ass but I
19 don't remember -- I don't recall saying that.

20 Q Well, we can listen to that part again
21 real quick.

22 (Video playing)

23 THE WITNESS: He said dumb ass.

24 Q (By Mr. Smolen) Oh, you think it's him
25 saying dumb ass?

1 A It doesn't sound like my voice.

2 Q We'll listen to it one more time.

3 (Video playing)

4 Q It seems pretty distinct to me --

5 A Yes.

6 Q -- that it was you? Do you agree with
7 that?

8 A I agree.

9 Q Why don't you tell the jury after
10 watching this video what you told Mr. Ellis?

11 MR. GIBBS: Object to the form.

12 THE WITNESS: It was obvious what I
13 said but --

14 Q (By Mr. Smolen) I want you to tell the
15 jury.

16 A I told him I was I'm tired of listening
17 to his dumb ass.

18 Q You were tired of listening to his dumb
19 ass. Now in the deposition earlier, I had asked
20 you about the conversations that you had had
21 with Mr. Ellis prior to this, and you had
22 indicated there was just the one conversation
23 where he told you about the back pain, correct?

24 A Yes.

25 Q Okay. If that's the truth, then why

1 regarding the alleged seizures?

2 A I was just going by my observations.

3 Q Well, you're -- you're threatening him.

4 You're saying, if you say you're having

5 seizures, you're going to be punished, correct?

6 MR. GIBBS: Object to the form.

7 THE WITNESS: You say a lot of

8 things when you work with inmates.

9 Q (By Mr. Smolen) Okay. And that was one
10 of those things that you were telling Mr. Ellis
11 that day, correct?

12 A It was on the video, yes.

13 Q Why would you tell an inmate that if he
14 reports his medical condition that he's going to
15 be punished?

16 MS. GOOCH: Object to the form.

17 MR. GIBBS: Same objection.

18 THE WITNESS: I can't answer that
19 because I don't know.

20 Q (By Mr. Smolen) You don't dispute
21 saying it, do you?

22 A I can't.

23 Q Right, we have the video of it?

24 A Right.

25 Q Why were you going to punish an inmate

1 --

2 A I wouldn't have punished an inmate.

3 Q -- for reporting a medical condition?

4 A I wouldn't punish an inmate.

5 Q Well, what did you tell him was going to
6 happen to him if he started this seizure stuff
7 up again?

8 A I don't recall.

9 (Video playing)

10 Q You're going on that D ring and that's
11 where you're going to stay the whole fucking
12 time because I'm sick and fucking tired of
13 dealing with you. Did you hear -- hear that?

14 MR. GIBBS: Object to the form.

15 THE WITNESS: Yeah.

16 Q (By Mr. Smolen) Okay. Tell the jury
17 what a D ring is.

18 A It's a metal ring that's cemented to the
19 floor.

20 Q Okay. So if Mr. Ellis kept complaining
21 about the fact that he was having trouble
22 walking, the fact that he was having seizures,
23 the fact that he was in pain, you were going to
24 chain him to the floor of the jail is what you
25 told him, yes?

1 A Yes.

2 Q Do you think that telling an inmate
3 who's complaining about medical conditions that
4 you're going to chain them to the floor of the
5 jail is an appropriate response?

6 A No.

7 Q But that didn't stop you from telling
8 him that that day, did it?

9 A No, but I wouldn't have done it.

10 Q You were just threatening him?

11 A Sometimes you have to threaten those
12 inmates.

13 Q Why?

14 A Because that's -- they -- I mean, you
15 have to respond to them in a way that they will
16 understand.

17 Q Okay. And what was it that you were
18 wanting Mr. Ellis to understand?

19 A That if he was faking -- I'm not saying
20 he was because I don't know -- I wasn't there --
21 that --

22 Q You were there?

23 A Not when he had the seizure -- or
24 supposedly the seizure that night -- the night
25 before that.

1 Q You told him that if any of these
2 medical conditions -- if he continues to
3 complain about them, he's going to be chained to
4 the floor, yes?

5 A That's on there. That's what I said.

6 Q You said that you had talked to him that
7 way because sometimes you just have to talk to
8 inmates like that?

9 A Sometimes.

10 Q Was the jail always -- or was the jail
11 staff always okay with you talking to inmates
12 like that when you had to?

13 MR. GIBBS: Object to the form.

14 THE WITNESS: I don't know.

15 Q (By Mr. Smolen) I mean, did anyone ever
16 discipline you for talking to inmates like that?

17 A No.

18 Q Anyone tell you that it was outside
19 their accepted practices or procedures?

20 A No.

21 Q Anyone give you any kind of corrective
22 action?

23 A No.

24 Q Would the sheriff or jail administrator
25 tell you at times that you needed to talk tough

1 like that to inmates?

2 A No.

3 Q That's something that you came up with
4 on your own?

5 A It was just a way you had to do it
6 sometimes.

7 Q Okay.

8 A It's a jail facility. It's a
9 correctional facility.

10 Q And at least you understood that that
11 was an accepted practice because of the type of
12 facility in which the medical was being
13 delivered that you could do that?

14 MS. GOOCH: Object to the form.

15 THE WITNESS: No.

16 Q (By Mr. Smolen) Did anyone prevent you
17 from doing that when you would do it?

18 A I --

19 MS. GOOCH: I'm sorry, I couldn't
20 understand your question, Dan.

21 Q (By Mr. Smolen) Would anyone ever
22 prevent you from talking to inmates like that?

23 MS. GOOCH: Object to the form.

24 THE WITNESS: No.

25 Q (By Mr. Smolen) Okay.

1 A It wasn't normal practice for me.

2 Q Okay.

3 A I don't know why I did it.

4 Q How many inmates had you chained to a D
5 ring before for complaining about medical
6 conditions?

7 A None.

8 MS. GOOCH: Object to the form.

9 Q (By Mr. Smolen) Excuse me?

10 A None.

11 Q Okay. Why did you then make the
12 decision that day to make that statement to Mr.
13 Ellis?

14 A I can't answer that. I don't know.

15 Q Why would you ever discourage an inmate
16 from disclosing their subjective complaints?

17 A I wouldn't. I didn't ever before. I
18 don't know. It's not a general practice I --
19 that I would do.

20 Q Why did you do it with Mr. Ellis?

21 A I can't answer that.

22 Q Why can't you answer it?

23 A I don't know.

24 Q I want you to hear this other part here.

25 (Video playing)

1 Q All right. Ain't a damn thing wrong
2 with you and that you were sick and tired of
3 dealing with his dumb ass. How were you able to
4 make that diagnosis?

5 A I didn't make a diagnosis. It was my
6 observation.

7 Q Your observation that there was nothing
8 wrong with him?

9 A That he had -- was -- he had been up
10 walking, his legs were not black as he said they
11 were. He had -- all morning long he had been up
12 eating breakfast. He ate his breakfast. He was
13 drinking. He was going to the restroom. It
14 wasn't an diagnosis. It was an observation.

15 Q Your observation was that there was
16 nothing wrong with him?

17 A My observation was there was -- what he
18 was stating at the time was not true because his
19 feet were not purple. They were not black at
20 that time.

21 Q I mean, how is it that Mr. Ellis is
22 found and he's got black limbs a few hours
23 later, but at the time you're screaming at him,
24 he didn't?

25 A That's something --

1 MR. GIBBS: Object to the form.

2 MS. GOOCH: Object to the form.

3 THE WITNESS: That's something I
4 can't answer.

5 Q (By Mr. Smolen) I mean, do you think he
6 could just see into the future that his legs
7 were going to turn black?

8 MS. GOOCH: Object to the form.

9 MR. GIBBS: Object to the form.

10 THE WITNESS: I can't answer that.

11 Q (By Mr. Smolen) When he told you that
12 his feet were black and you're screaming at him,
13 did you do any kind of other assessment?

14 A I can't answer that. I don't remember.

15 Q When he told you that his legs were
16 numb, did you do any other kind of assessment?

17 MR. GIBBS: Object to the form.

18 THE WITNESS: No.

19 Q (By Mr. Smolen) I mean, he was
20 repeatedly telling you he couldn't feel his
21 legs, correct?

22 A He said he couldn't move his legs.

23 Q And when he told you that, did you do
24 any kind of medical to assess his condition?

25 A No.